

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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IN RE DMCA SECTION 512(H)
SUBPOENA TO ETSY, INC.
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ORDER
16-MC-1299 (JO)

JAMES ORENSTEIN, Magistrate Judge:

Petitioner Angel Kubo ("Kubo") asks that the Clerk of this court issue a subpoena directed to Etsy, Inc. ("Etsy") pursuant to The Digital Millennium Copyright Act, 17 U.S.C. § 512 ("DMCA"). Docket Entry ("DE") 1. For the reasons set forth below, I deny the motion without prejudice.

The DMCA authorizes the issuance of a subpoena to a "copyright owner or a person authorized to act on the owner's behalf[.]" *Id.* § 512(h)(1). Although Kubo may well be such a person, the record reflects no more than that Kubo has submitted to Etsy the kind of request that a copyright owner might have an incentive to make. *See* DE 1, Ex. 2. But I cannot determine from the record whether Kubo is personally the copyright owner, the owner's authorized representative, or neither.

In addition, pertinent law requires the submission "a copy of a notification described in subsection (c)(3)(A)." DMCA § 512(h)(2)(A). Instead of providing that documentation, Kubo has submitted Etsy's acknowledgment of the notification that Etsy sent to Kubo. DE 1, Ex. 2. While that acknowledgement includes most of the information required for a valid notification, it does not include, as an effective notification must, "[a] physical or electronic signature of a person authorized to act on behalf of the owner of" the pertinent copyright. DMCA § 512(c)(3)(A)(i). I therefore deny the application without prejudice to the movant's right to submit a revised application that cures the defects described above.

SO ORDERED.

Dated: Brooklyn, New York
August 22, 2016

_____/s/
JAMES ORENSTEIN
U.S. Magistrate Judge